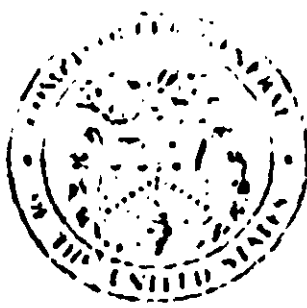


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-191039

DATE: June 16, 1978

MATTER OF: Bertil Peterson - Meritorious Claim

DIGEST: Reemployed annuitant's official duty station was designated near his residence in Arizona and employee was erroneously reimbursed for travel and subsistence expenses for duty performed in Virginia. Duty station must be where major part of duties are performed and cannot be designated elsewhere in order to pay such expenses. Claim for travel and subsistence expenses is not for reporting to Congress as meritorious claim.

This action is in response to the request of Mr. Bertil Peterson, a retired Federal employee, for relief from collection of erroneous payments of travel and subsistence expenses which were made incident to his reemployment by the Department of the Interior (Interior). We have also received a report from Interior recommending that this case be submitted to Congress under the Meritorious Claims Act, 31 U.S.C. § 236 (1970).

The record before us indicates that Mr. Peterson retired in July 1973, from his position with the National Park Service as a Realty Specialist at the Colonial National Park, Virginia, and that in 1975 he was asked to return as a reemployed annuitant to assist with the purchase of additional property within the boundaries of the Park. It appears that Mr. Peterson expressed some reluctance to return to the Colonial National Park from his residence in Glendale, Arizona, in view of the travel and subsistence expenses which would be incurred and the fact that his salary would be reduced by the amount of his annuity. Under these circumstances, Interior determined that Phoenix, Arizona, would be considered Mr. Peterson's official duty station and that he would, therefore, be entitled to travel and subsistence expenses while employed in Virginia.

Mr. Peterson accepted the offer of reemployment under those circumstances and was employed during the periods from August 29, 1975, to October 18, 1975, and from February 22, 1976, to March 30, 1976. Subsequently, during the course of a Civil Service Commission audit, this personnel action

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was questioned, and Interior determined it had erred in designating Phoenix, Arizona, as Mr. Peterson's official duty station. The agency has determined that Mr. Peterson was erroneously reimbursed for travel and subsistence expenses in the amount of \$3,055.24, and, while the agency has sought to collect the erroneous payment from Mr. Peterson, it has also recommended that his case be submitted to Congress under the Meritorious Claims Act.

Our Office has long held that the location of an employee's place of official business or official duty station presents a question of fact and constitutes the place at which he performs the major part of his duties and is expected to spend the greater part of his time. See 32 Comp. Gen. 87 (1952). In addition, we have held that an agency may not designate an official duty station contrary to the actual circumstances for the purpose of paying an employee per diem for temporary duty in another location. 19 Comp. Gen. 347 (1939); and 10 id. 469 (1931). Based on the record before us, we agree with Interior's decision that Phoenix, Arizona, was erroneously designated as Mr. Peterson's official duty station.

It is unfortunate that the officials of Interior exceeded their authority by erroneously determining Mr. Peterson's official duty station and authorizing travel and subsistence expenses, but it is well established that the United States can be neither bound nor estopped by the unauthorized acts of its agents. See Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947).

With regard to the application of the Meritorious Claims Act, 31 U.S.C. § 236 (1970), that Act provides that when a claim is filed in this Office that may not lawfully be adjusted by the use of the applicable appropriation, but which claim in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of Congress, it shall be submitted to the Congress with our recommendations. The remedy is an extraordinary one and its use is limited to extraordinary circumstances.

The cases reported for the consideration of the Congress generally involve equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem, since to

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report to the Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances.

The circumstances of Mr. Peterson's case are neither unusual nor unlikely to recur. Therefore, we do not find the elements of unusual legal liability or equity which would justify our reporting his claim for travel and subsistence expenses to the Congress for its consideration under the Meritorious Claims Act.


Acting Comptroller General
of the United States